

APPEAL NO. 020231
FILED MARCH 14, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 8, 2002, the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain an occupational disease injury to the right upper extremity on _____, and did not have disability resulting from such claimed injury. The claimant has appealed, asserting that these determinations are not sufficiently supported by the evidence. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The claimant contended that the various duties he performed for the employer since May 1998 in the assembly of commercial refrigeration cases, described by the hearing officer in her statement of the evidence, involved the use of his hands in repetitive movements and resulted in his sustaining a repetitive trauma injury to his right wrist and hand with a date of injury of _____. It was undisputed that the claimant subsequently sustained a specific, compensable left upper extremity injury on _____. The claimant relied on his testimony concerning the repetitious nature of his duties and the opinion of Dr. E. However, the hearing officer noted that the medical evidence reflected that the claimant's right upper extremity symptoms manifested after the _____, injury. She also felt that the testimony of the supervisor relating to the relative repetitiveness of the claimant's duties was credible.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d

477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge